BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Assess and Revise the Regulation of Telecommunications Utilities.	R.05-04-005 (Filed April 7, 2005)

REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON PROPOSED DECISION REGARDING MONITORING REPORTS, RETAIL SPECIAL ACCESS PRICING AND CUSTOMER DISCLOSURE RULES

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July 28, 2008

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SUMMARY OF RECOMMENDED CHANGES

- The Commission should adopt DRA's monitoring proposals set forth in our February 2007 proposal and as modified by DRA's Opening and Reply Comments, filed March 2, 2007 and March 30, 2007, respectively.

- To avoid further undermining of the Commission's reliance on the FCC ARMIS reports, the final decision in this proceeding should clarify that carriers shall file the ten ARMIS reports with the Commission regardless of the outcomes with the pending FCC petitions. In other words, even if ILECs are freed from the responsibility to provide data to the FCC, the ILECs would be required to report to the CPUC the same data that would have appeared on the California-relevant portion of their ARMIS reports (which would include national or regional data if there is no California-specific reporting on a particular item in the current ARMIS report).

- The Commission should also retain the Field Research Affordability Study, with the modifications that DRA proposed.

- The Commission should monitor rate changes for services that are included in the typical customer bill (*i.e.*, services to which a simple majority of residential and/or small business customers subscribe) to ensure that phone service is reasonably priced. Without a summary of these important rate changes it would be nearly impossible for the Commission or its staff to monitor these changes given the multitude of other rate changes for those services that could occur.

- The Commission should delete footnote 42 to avoid any potentially erroneous implications limiting the Commission's jurisdiction.

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (the "CPUC" or "Commission"), the Division of Ratepayer Advocates ("DRA") respectfully submits these Reply Comments in response to Parties' Comments on the July 1, 2008 Proposed Decision ("PD") on the remaining Phase II issues concerning monitoring reports, retail special access pricing, and customer disclosure rules. In sum, DRA urges the Commission to reject the PD.

I. DISCUSSION

The *Phase I URF decision*, D.06-08-030, explicitly requires that the CPUC's new regulatory framework be consistent with state and federal statutes and the policies incorporated therein.[1] The key telecommunications policies that set the goals for this proceeding are stated in Public Utilities (P.U.) Code § 709.[2] Notably, a majority of the objectives in § 709 consist of commitments to consumers,[3] such as "the *continued affordability* and wide-spread *availability* of high-quality telecommunications services…."[4] While the statute makes clear that service affordability and availability are ongoing commitments of the state, and the PD agrees that the Commission has an interest in monitoring affordability,[5] the PD, nonetheless, provides no assurances to consumers of *how* the Commission will meet that commitment. Instead, the PD vaguely states that it *may* have an interest in periodically reviewing affordability.[6]

Similarly, the PD acknowledges that the Commission may have an interest in reviewing periodically the state of competition in California,[7] but fails to adopt any California-specific monitoring reports that would allow the Commission to assess effectively the status of competition. The PD asserts that "there are various sources from which the Commission can obtain such

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[1] D.06-08-030, *slip. op*., at 30-31.

[2] *Id*. at 31-32.

[3] *See* e.g., P.U. Code § 709(a) (continue commitment to universal service through affordable and widespread telecommunications services; P.U. Code § 709(c) (encourage development and deployment of new technologies and equitable provision of services to efficiently meet consumer needs); P.U. Code § 709(d) (bridge the "digital divide" for rural, inner-city, and low-income Californians); P.U. Code § 709(f) (promote lower prices, broader consumer choice, and avoidance of anti-competitive conduct); P.U. Code § 709(g) (promote fair product and price competition that encourages greater efficiency, lower prices, and more consumer choice); P.U. Code § 709(h) (encourage the fair treatment of consumers through provision of sufficient information for making informed choices); see also DRA Comments, filed March 2, 2007, at 15-18.

[4] P.U. Code § 709(a) (emphasis added).

[5] PD at 16-17.

[6] PD at 17.

[7] *Id*.

information" and points to the FCC ARMIS reports and non-ARMIS reports as the sources.[8] However, the United States Department of Defense and all other Federal Executive Agencies ("DOD\FEA") agreed with DRA "that ne[i]ther the ARMIS Reports nor any other FCC reports provide the data [California] needs to evaluate how well the newly adopted regulatory regime is meeting the Commission's objectives."[9] The ARMIS reports alone contain little or no information directly relevant to the policy objectives of § 709.[10]

Equally problematic is the PD's misplaced reliance upon the *URF Phase I decision* findings regarding the status of competition to justify the rejection of the reporting requirements and customer disclosure rules DRA recommended in Phase II of this proceeding.[11] The PD has no reasonable basis to *assume* that the voice communications market will remain competitive. "Neither the Commission nor any party to this proceeding can presume to predict how things will change in this dynamic, recently deregulated (and still dominated by a few players) market."[12] DOD/FEA had "urged the Commission to start monitoring expeditiously to provide a reference point as soon as possible after the Commission's 2006 [URF Phase I] order."[13] In the meantime, the so-called "competitive market" has produced drastic price increase for existing services, and required Commission action against AT&T to ensure customers receive adequate disclosures about basic service.[14] These market failures indicate that the PD's proposed "wait and see" approach cannot comport with the Commission's policy objectives pursuant to § 709.[15]

A. DRA'S MONITORING PROPOSAL WOULD CREATE A COST EFFECTIVE AND COMPREHENSIVE MONITORING PROGRAM.

In D.06-12-044, the Commission rejected DRA/TURN's opposition to the elimination of NRF-specific monitoring reports adopted in the *Phase I URF decision*. The Commission reasoned that D.06-08-030 was only the first step in determining the ultimate range of monitoring reports it may require under URF to meet the statutory obligations in the "new competitive environment," and

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[8] *Id*. at 21.

[9] DOD/FEA Comments on July 1, 2008 PD, *filed* July 21, 2008, at 5 (footnote omitted).

[10] *See* DRA Comments, *filed* March 2, 2008, at 9-12.

[11] PD at 5.

[12] *See* DRA Reply Comments, *filed* March 30, 3007, at 18.

[13] DOD/FEA Comments on July 1, 2008 PD, *filed* July 21, 2008, at 4.

[14] D.08-04-057.

[15] *See* DRA Reply Comments, fi*l*ed March 30, 3007, at 18-19.

that further consideration of reporting issues in Phase II would ensure that the Commission has properly proceeded in a manner required by law.[16]

Despite this guarantee, the PD nonetheless fails to "give adequate weight to views expressed by California consumers, and by the parties representing consumers."[17] As a result, the Commission would not be proceeding lawfully and would commit legal error if it adopts the PD. For example, DOD/FEA points out that the PD "does not address all of the Comments and Reply Comments by DOD/FEA in support of additional monitoring reports and further disclosures."[18] Moreover, DOD/FEA indicates that the PD addresses the positions of DRA and TURN on these topics, "but reaches conclusions that dismiss each of the recommendations made to benefit end users in California."[19] DOD/FEA, while approving of the monitoring efforts DRA and TURN proposed, finds that the PD incorrectly concludes that additional monitoring reports would not be beneficial.[20]

TURN/DisabRA observe that the PD errs in acknowledging that "it should have 'access to information about whether services are affordable,' but does not support that statement with [any] meaningful conclusions."[21] Additionally, the PD notes the suggestion of many parties that one type of data collection could be through third-party targeted surveys, and even concedes that "such surveys may provide useful information regarding consumers' experiences and perceptions with their telecommunications services."[22] Without explanation, however, the PD fails to adopt the third party surveys and instead proposes waiting until the Commission's annual report reflects a drop in subscribership before taking action.[23] This conclusion sidesteps the likelihood that the Commission would violate the § 709(a) universal service mandate if it were to affirmatively allow a decrease in the statewide penetration rate.

TURN/DisabRA also correctly recognize the multi-dimensional nature of affordability, which extends beyond tracking price changes, and includes measures of consumers' income and

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[16] D.06-12-044, *slip. op*., at 27.

[17] DOD/FEA Comments on July 1, 2008 PD, *filed* July 21, 2008, at 3.

[18] *Id*.

[19] *Id*.

[20] *Id.* at 3-4.

[21] TURN/DisabRA Comments on July 1, 2008 PD, *filed* July 21, 2008, at 4.

[22] PD at 24.

[23] *Id*.

expenditure levels for other necessities.[24] Consequently, like DRA, TURN recommends that the Commission reinstitute the Field Research Affordability study.[25]

In essence, DRA's Monitoring Proposal consists of 6 reports, of which only 4 require any utility action. DRA recommends requiring carriers to submit reports consisting of their service availability, prices, revenues, and line counts, all of which the carriers already collect for their own business purposes.[26] The other two proposed reports, concerning affordability and competition, would be conducted by third parties. Thus, not only would DRA's Monitoring Proposal be cost effective, as discussed above, it would also provide the Commission with a comprehensive means to ensure the meeting of statutory obligations.

B. CONSUMER PROTECTION MEASURES ADOPTED IN D.06-03-013 ARE NOT PROVIDING CONSUMERS ADEQUATE PROTECTION.

Joint Commenters claim that "[t]here is no evidence that the consumer protection measures that the Commission adopted more than two years ago, as in D.06-03-013, coupled with the multiple consumer protection initiatives described in the PD, have failed in any manner to provide consumers with an adequate level of consumer protection."[27] Based on that erroneous observation, Joint Commenters reject the additional measures advocated by TURN and DRA as unnecessary and an unwinding of the reforms adopted in D.06-03-013, the Consumer Protection Initiative ("CPI").[28] However, Joint Commenters overstate the CPI's consumer protection efforts.[29] TURN/DisabRA concur with DRA.

More accurately, D.06-03-013 eliminated consumer protection rules that were found in the *Bill of Rights* decision.[30] For example, the CPI eliminated the requirement that key rates, terms and conditions be "clear and conspicuous."[31] The CPI also eliminated the right to cancel service within 30 days without the imposition of a penalty. While the CPI decision resulted in creation of a CPUC

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[24] *Id*.

[25] *Id*.

[26] *See* DRA Comments on July 1, 2008 PD, *filed* July 21, 2008, at 12.

[27] Joint Commenters Comments on July 1, 2008 PD, *filed* July 21, 2008, at 3.

[28] *Id*.

[29] *See* DRA Comments on July 1, 2008 PD, *filed* July 21, 2008, at 13-15.

[30] D.04-05-057.

[31] The CPI Decision eliminated Rule 2(d) of the Bill of Rights Decision.

sponsored website, the website contains no detailed information about carriers' services or terms and conditions. [32]

Similar to Joint Commenters, Verizon places too much emphasis on the "the significant actions this Commission has taken over the years, including the adoption of cramming and in-language protections as well as new enforcement measures,"[33] to justify the PD's rejection of additional customer disclosure rules. However, Verizon fails to acknowledge that all utilities participating in the cramming proceeding, including Verizon, have strenuously argued for the elimination of substantive reporting requirements for all carriers. Moreover, the cramming proceeding is currently pending and therefore, the PD errs in implying that this proceeding offers any affirmative consumer protection. Finally, as TURN/DisabRA note, "[t]he results of the Limited English Proficiency docket have been disappointing," because the adopted LEP Rules are more limited than those consumer groups had advocated and the Commission has not implemented monitoring and complaint tracking proposals.[34]

II. CONCLUSION

For all of the reasons stated herein, DRA respectfully requests that the Commission reject the PD or modify the PD as recommended by DRA to eliminate the factual and legal errors identified. Additionally, the Commission should adopt DRA's Monitoring Proposal as well as the recommended consumer protection disclosure requirements.

July 28, 2008

Respectfully submitted,

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[32] TURN/DisabRA Comments on July 1, 2008 PD, *filed* July 21, 2008, at 10.

[33] Verizon Comments on July 1, 2008 PD, *filed* July 21, 2008, at 2.

[34] TURN/DisabRA Comments on July 1, 2008 PD, *filed* July 21, 2008, at 11.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of "**REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON PROPOSED DECISION REGARDING MONITORING REPORTS, RETAIL SPECIAL ACCESS PRICING AND CUSTOMER DISCLOSURE RULES"** in **R.05-04-005** by using the following service:

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Executed on the 28th day of July 2008, at San Francisco, California.

/s/ Martha Perez

Martha Perez

N O T I C E

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